



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

November 3, 2015

Re: Applicability of Idaho Money Transmitters Act to Payroll Processing

Dear Mr. _____ :

The Idaho Department of Finance has reviewed the information presented in your letters dated July 16, and October 12, 2015. You asked the Department to either take a no-action position or confirm that your client, _____, would not be required to obtain an Idaho Money Transmitter license.

We understand from your letter that _____ provides payroll solutions to employers in the United States. Along with the administrative and technical services provided by _____; other services provided by _____ include: 1) _____ 2) _____ and 3) _____. When _____ offers any of the three services, _____ takes possession of funds one business day prior to employees' pay date.

Depending on which of the three services _____ provides, funds are either transferred from _____'s bank account to employees' bank accounts via electronic funds transfer or funds are sent by official check – both transactions occur on the employees' pay date. If _____ provides tax filing services, _____ transfers funds to taxing authorities when taxes are due.

Based on our understanding of _____'s business, it is the Department's opinion that along with the administrative and technical services provided by _____; an integral piece of _____'s business model includes the business of receiving money for transmission and transmitting money within the United States. As such, it is our view that the activity described above is money transmission and regulated pursuant to the Idaho Money Transmitters Act.

If you have questions, please feel free to contact me at 208-332-8081.

Sincerely,

Coleen Hodson
Supervising Investigator/Examiner
Idaho Department of Finance

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CONFIDENTIAL TREATMENT REQUESTED
Via U.S. Mail

James A. Burns
Investigations Chief
Idaho Department of Finance
P.O. Box 83720
Boise, ID 83720-0031

July 16, 2015

Re: Applicability of Idaho Money Transmitters Act to Payroll Processing

Dear Mr. Burns:

I am writing on behalf of _____, concerning whether it is required to obtain a license under the Idaho Money Transmitters Act for its payroll processing business. _____ requests that the Department confirm that it is not required to obtain a license based on the facts presented in this letter, or alternatively that the Department take a no-action position with respect to _____'s licensure.

I. Overview of _____'s Business

_____ provides payroll solutions to employers in the United States, including various administrative and technical services to help them manage their payroll. For some employer clients, in addition to the administrative and technical services that are the heart of its business, _____ provides some incidental services that require _____ to take possession of funds. _____ offers three such services: Centralized Direct Deposit, Official Checks, and Tax Filing. When _____ offers any of these three services, funds are transferred from the employer's bank account to _____'s bank account one business day prior to employees' pay date.

In the case of Centralized Direct Deposit, _____ transfers the funds from its bank account to employees' bank accounts via electronic fund transfer on the pay date. In some cases, _____ briefly invests the funds in highly liquid overnight securities. In the case of Official Checks, _____ sends funds by check to employees on the pay date. Again, in some cases, _____ briefly invests the funds in highly liquid overnight securities. Finally, in the case of Tax Filing, _____ is responsible for transferring funds to the appropriate federal and state taxing authorities when taxes are due. Thus, these funds may be retained for a longer time period than Centralized Direct Deposit or Official Check funds. Although the majority of Tax Filing funds received on any

given day are transferred to taxing authorities within a week, a portion may be held for as long as seven months. may invest in short- to intermediate-term securities.

Employers remit funds to rather than directly to the recipients because this is more convenient and cost effective for employers. As the employers' payroll processor, is responsible for calculating and tracking the amounts of payroll funds to disburse among various employees, tax authorities, other governmental agencies (such as child support agencies), and benefit plans, and determining when and how payroll funds must be disbursed among these various employees, tax authorities, other governmental agencies and benefit plans. also has authority as the employers' "reporting agent" to sign and file employment tax returns. Rather than receive detailed disbursement instructions from , employers are able to disburse one or more aggregate payments to for each payday, which then disaggregates and disburses to the various recipients.

 does not provide funds disbursement as a standalone service. That is, no employer determines how funds must be disbursed on payday itself and then retains to handle the distribution. If an employer already knew how payroll funds should be disbursed, it would deliver these instructions to its bank; there would be no reason to delivery these instructions to with the payroll funds so that could relay the instructions to its own bank. Employers hire primarily to provide payroll, time, and human resource solutions, including gross-to-net pay, tax withholding and deduction calculations, and reporting/compliance. Among other services, manages the process of determining how payroll funds must be disbursed. Having the funds route through is simply more efficient than having relay the instructions back to the employer to remit to the employer's bank. Using to provide disbursement instructions to a bank with which has an established relationship—rather than providing disbursement instructions to a broad range of banks for employers—further lowers the risk that there is a system error or miscommunication that results in funds not disbursing properly on time.

 has implemented a system of controls to protect funds that it holds for its employer clients. First, does not commingle its operating funds with client funds. Second, there is daily reconciliation of all client fund accounts. Third, to the extent that funds are invested, they are invested according to an Investment Policy approved by 's board of directors. recognizes that because funds holds represent monies collected from clients for payments to employees and taxing authorities, credit quality and preservation of capital are of paramount importance. also ensures that its investments have the necessary liquidity, so that they are available when they need to be disbursed.

 's business model is common in the payroll processing industry. We believe that the vast majority of 's competitors have a business model similar to 's.

II. Analysis

As you know, Idaho defines “money transmission” in pertinent part as “engaging in the business of receiving money for transmission or the business of transmitting money within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer.” Idaho Code § 26-2902. An entity that engages in this activity, subject to some specific exceptions that do not apply to [redacted], requires a license.

We do not believe that this statutory language was intended to cover payroll processors like [redacted]; and we think the statutory phrase “engaging in the business of receiving money for transmission” supports this understanding. This phrase connotes a company that is providing money transmission as a distinct product or service, not a company that might incidentally receive money for “transmission” in connection with some other business. Even if [redacted]’s disbursement of payroll funds constitutes “receiving money for transmission,” it would be odd to say that [redacted] is “engaged in the business of receiving money for transmission.”

Employers do not retain [redacted] for the service of disbursing funds to employees and taxing authorities *per se*. [redacted]’s business is providing employers with the platform to manage their payroll obligations, including ensuring that the correct amounts are withheld from paychecks and remitted to tax authorities, benefit plans, etc. [redacted] does not disburse funds to employees or tax authorities as a standalone service. Indeed, there would be no market for such a service. If all an employer needed was the service of remitting money, this could easily be accomplished by providing ACH instructions directly to the employer’s bank. Employers hire payroll processors like [redacted] to manage the process of calculating payroll, withholdings, and deductions, and for tracking when and where funds need to be disbursed. As explained above, [redacted] manages the disbursement of funds only because it is more efficient (and less error prone) for [redacted] to relay disbursement instructions to a bank with which [redacted] has an established operating relationship, rather than disseminating batch ACH instructions to myriad banks on behalf of its employer clients. Accordingly, we do not believe that it is accurate to say that [redacted] is “engaged in the business” of receiving money for transmission. To the extent [redacted] does receive money for transmission, it is merely an incidental, but integral, component of the business in which [redacted] is primarily engaged—managing payroll for employers. Consider the following. After writing this letter, I scanned it and made a PDF of this letter and emailed it to the Department. Scanning and emailing letters is an integral part of my business; this letter would not be worth much to [redacted] if I never sent it to the Department. But it would be strange if I said that I am “engaged in the business of scanning and emailing letters.” By the same token, it would be strange to say that [redacted] is “engaged in the business of receiving money for transmission” simply because [redacted] (arguably) receives money for transmission incidental to its payroll management business.

This interpretation of the phrase “engaged in the business” would align the Idaho Money Transmitters Act with Financial Crimes Enforcement Network rules on money transmitters.¹

¹ We recognize that FinCEN rules are not controlling with respect to the Idaho Money Transmitters Act. However, FinCEN’s reasoning provides persuasive support for the conclusion that a company is not “engaged in the business”

FinCEN regulations exclude from the definition of *money transmitter* entities that transmit money as “only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.”² When FinCEN enacted rules relating to MSBs, it explained that the purpose of the predecessor to this definitional limitation³ was to avoid “unnecessary burden and the extension of the [BSA] to businesses whose money transmission activities . . . are ancillary to the completion of other transactions.”⁴ To require licensure under Idaho law for these same activities could likewise impose an unnecessary burden on a wide variety of businesses that were not the intended target of the Idaho Money Transmitters Act. _____ is a prime example. As discussed above, _____’s money transmission activities are only an integral part of the payroll management services that _____ provides to its clients, such as payroll processing, reporting, ledger integration, time keeping and human resource and benefits administration. Managing the disbursement of funds is not a service that _____ provides in and of itself; it is integral and incidental to _____’s primary service.

Requiring _____ to obtain a license would not advance the overall purposes of the Act for additional reasons. First, _____’s clients are employers, not the consumer employees who receive the funds. Employers presumably are in a better position than consumers to assess whether a payroll processor is financially sound and operates in a prudent manner. Additionally, in the highly unlikely event that _____ failed to remit funds to the employee, the employer would still be liable to the employee for the wages. Second, the risk of money laundering or terrorist financing is virtually nonexistent in the context of payroll payments by domestic U.S. employers. Indeed, FinCEN noted this when it excluded certain providers of payroll cards from its prepaid access rules.⁵ FinCEN excluded from the scope of these rules providers of prepaid access solely to “employment benefits, incentives, wages, or salaries,” provided certain other requirements were satisfied.⁶ FinCEN explained that it excluded providers of payroll cards from the rule because in the typical employer-employee relationship the employer has sufficient personal details about its employees (*e.g.*, full name, address, birthdate, ID number) that it can pass along

of money transmission within the meaning of Idaho law if the company handles funds in connection with some other primary business activity, and not as a standalone service.

² 31 C.F.R. § 1010.100(ff)(5)(ii)(F).

³ Prior to 2011, the provision said that “money transmission” generally does not include “the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property).” *See former* 31 C.F.R. § 103.11(uu)(5)(ii) (1999). FinCEN made amendments to its regulations in 2011 that were intended to “update[], streamline[], and clarif[y]” the Regulations “by incorporating and extending” past FinCEN interpretations of “which activities are covered by or excluded from the definition” of an MSB. 76 Fed. Reg. 43585, 43586-87 (July 21, 2011).

⁴ 64 Fed. Reg. 45438, 45443 (Aug. 20, 1999).

⁵ *See* 31 C.F.R. § 1010.100(ff)(4)(iii)(D).

⁶ *Id.*

to the business providing access to the prepaid wages and salaries; thus, “there are sufficient checks on possible money laundering abuse.”⁷ FinCEN therefore concluded that payment of wages and salaries “solely from the employer does not represent an opportunity for the placement of ill-gotten funds into the financial system.”⁸ This reasoning applies to payroll processors as well.

We request that the Department confirm that _____ is not within the intended scope of the Idaho Money Transmitters Act and so does not require a license, at least based on the facts described in this letter. Alternatively, if the Department does not wish to reach a conclusion on this issue at this time, we request that the Department take a no-action position with respect to _____.

As noted above, _____’s business model is not unique. We believe that the majority—likely the vast majority—of payroll processors manage funds the same way that _____ does. However, the only payroll processor licensed as a money transmitter in Idaho is _____. _____ would be at a significant competitive disadvantage if it were required to be licensed as a money transmitter while the vast majority of its competitors continued to operate without a license. Accordingly, if the Department decides that _____ should be licensed, we respectfully request that it announce its position publically and inform other payroll processors operating in Idaho that they must be licensed if they have a business model similar to _____’s.

* * * * *

Thank you for your time and attention to this matter. Please do not hesitate to contact me at _____ or _____ if you have any questions.

Sincerely,

⁷ 76 Fed. Reg. 45403, 45411 (July 29, 2011).

⁸ *Id.*